

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
CSC Holdings, Inc.	)	
	)	CSR-6163-E
Petition for Determination of Effective	)	
Competition	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: April 14, 2004**

**Released: April 15, 2004**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. CSC Holdings, Inc. ("Cablevision") has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in nine New York cable communities ("Communities").<sup>1</sup> Cablevision alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended ("Communications Act"), and Section 76.905(b)(2) of the Commission's rules, and seeks revocation of the certification of the New York Public Service Commission to regulate basic cable service rates.<sup>2</sup> Cablevision claims the presence of effective competition in the Communities stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Communications Corporation ("EchoStar"). The Petition is unopposed.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 76.905 of the Commission's rules.<sup>4</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area. Based on the record

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<sup>1</sup> The Communities are: (1) Flower Hill (NY1046); (2) Kensington (NY1037); (3) Kings Point (NY1036); (4) Lake Success (NY1039); (5) North Hills (NY1047); (6) Plandome (NY1042); (7) Plandome Heights (NY1043); (8) Plandome Manor (NY1044); and (9) Saddle Rock (NY1041).

<sup>2</sup> 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b)(2).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> 47 C.F.R. § 76.905.

in this proceeding, Cablevision has met this burden.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds fifteen percent of the households in the franchise area.<sup>5</sup>

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>6</sup> Cablevision has provided evidence of the advertising of DBS service in news media serving the Communities.<sup>7</sup> We find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer more than 12 channels of video programming, including more than one non-broadcast channel.<sup>8</sup> Cablevision has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Cablevision has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of the DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and EchoStar.<sup>9</sup> Therefore, the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Cablevision sought to determine the competing provider penetration in its franchise area by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within Communities on a franchise-specific zip code plus four basis.<sup>10</sup>

6. Pursuant to Section 76.907(c) of the Commission's rules, cable operators may request subscriber information from competitors for effective competition purposes, however, such subscriber information may be limited to numerical totals.<sup>11</sup> The Commission has accepted DBS subscriber reports from SkyTrends on behalf of the DBS providers in satisfaction of this requirement.<sup>12</sup> Under the circumstances of the instant case, we believe that Cablevision has satisfied its obligations under the Commission's rules regarding the provision of subscriber information for effective competition purposes.

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<sup>5</sup> 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>6</sup> *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>7</sup> Petition at 4 and Exhibits 2 and 3.

<sup>8</sup> *See* 47 C.F.R. § 76.905(g). *See also* Petition at 4 and Exhibit 5.

<sup>9</sup> Petition at 3-4.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *See* 47 C.F.R. § 76.907(c).

<sup>12</sup> *See, e.g., Mountain Cable Company d/b/a Adelphia Cable Communications*, 14 FCC Rcd 13994, 13997 n.26 (1999).

7. Cablevision asserts that it is the largest MVPD in the Communities because its subscribership exceeds the aggregate DBS subscribership for the franchise area.<sup>13</sup> Cablevision submits the following DBS subscriber penetration information for each of the Communities:

(1) Flower Hill DTH Penetration=18.42 percent; (2) Kensington DTH Penetration=15.33 percent; (3) Kings Point DTH Penetration=16.35 percent; (4) Lake Success DTH Penetration=18.80 percent; (5) North Hills DTH Penetration=20.85 percent; (6) Plandome DTH Penetration=17.60 percent; (7) Plandome Heights DTH Penetration=15.43 percent; (8) Plandome Manor DTH Penetration=17.60 percent; and (9) Saddle Rock DTH Penetration=17.74 percent.

Based on these data, calculated using 2000 Census household data,<sup>14</sup> we find that Cablevision has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Cablevision has submitted sufficient evidence demonstrating that its cable system serving the Communities is subject to effective competition.

### III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by CSC Holdings, Inc. **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that the certification of the New York Public Service Commission to regulate basic cable service in the Communities **IS REVOKED**.

10. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>15</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Deputy Chief, Policy Division, Media Bureau

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<sup>13</sup> *Id.* at 5.

<sup>14</sup> *See id.*

<sup>15</sup> 47 C.F.R. § 0.283.